IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 4788 of 2004
For Approval and Signature:
HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHLAM ILYAZ SHAIKH

Versus

DISTRICT MAGISTRATE

Appearance:
MR SATISH R PATEL for the Petitioner.
MR KR JANI for Petitioner No. 1
MR.A.Y. Kogje, Assistant GOVERNMENT PLEADER,
for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/06/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 10.10.2003. By the impugned order, the petitioner-detenu is detained under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short).

Along with the detention order, the grounds of detention was also served on the petitioner. The aforesaid detention order is challenged by the petitioner, on various grounds.

On behalf of the petitioner, Mr.Patel, learned Advocate, submitted that there is delay in passing the order of detention since the date of last incident as the last incident occurred on 7.7.2003. He submitted that in view of this long delay of more than three months, the petitioner is required to be released, for which he has relied on the decision of this Court in Elesh Nandubhai Patel v. Commissioner of Police, 1997(1) GLH 381, wherein this Court has observed as under in paragraph 21 :-

> " ... ...
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> 21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993(2) Suppli SCC 61.
>
> ... ..."

It was next argued by Mr.Patel that the authority has not properly claimed the privilege under Section 9(2) of PASA and names of the secret witnesses are withheld,

but the authority has not said anything about its subjective satisfaction that the authority is satisfied that it is not advisable to disclose the names of the witnesses. He submitted that no such reference is made in the order, by which privilege under Section 9(2) of PASA can be said to have been claimed by the detaining authority. In order to substantiate that ground, he has relied upon the Division Bench decision of this Court in Kajalben G. Sindhi v. Commissioner of Police, Ahmedabad & Ors., 2000(2) GLR 1296. This Court has considered this aspect in paragraph 10 as under :-

" ... ...

10. In the facts and circumstances of the case, in our opinion, this L.P.A. can be allowed by upholding the last contention of the learned Counsel for the appellant. It is clear that the last incident relating to cases registered against the detenu was of May 17, 1998. Thereafter, there was substantial gap between the incident in question and recording of statements by the authorities. It may be recalled that two statements were recorded on January 7 and 8, 1999. Unregistered incidents reflected in the statements of witnesses took place on December 1, 1998 and December 20, 1998. The detaining authority had verified the statements of both the witnesses. The detaining authority, however, had not stated anything regarding his satisfaction of withholding names and particulars of the witnesses from the detenu. It is no doubt true, as observed by the learned single Judge, that both the witnesses have stated that if their names and particulars would be disclosed, there would be danger from the detenu. It is also stated in the affidavit-in-reply of the detaining authority that he was satisfied about the genuineness, correctness and veracity of the statements.

... ..."

So far as the facts of the present case are concerned, it is, no doubt, true that the detaining authority has said in the order that the factual aspect stated by the witnesses is correct, but regarding non-disclosure of names of witnesses, he has not stated that, in public interest, names of these witnesses are not required to be disclosed. Even there is no reference to Section 9(2) of the Act. The Department has not even filed any affidavit-in-reply, resisting any of the points raised in this petition. In view of the aforesaid, this petition is required to be allowed on the ground of not disclosing the names of the witnesses, for which no proper explanation is offered in the order.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. The Rule is made absolute accordingly.

June 24, 2004 (P.B. Majmudar, J.)

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(apj)